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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17
18 **Nehemiah Kong,**

19 Plaintiff,

20 v.

21 **Towne Center West I, LLC**, a
22 Delaware Limited Liability
23 Company;

24 **Towne Center West II, LLC**, a
25 Delaware Limited Liability
Company; and Does 1-10,

26 Defendants.

27
28 **Case No.**

29
30 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

31 Plaintiff Nehemiah Kong complains of Towne Center West I, LLC, a
32 Delaware Limited Liability Company; Towne Center West II, LLC, a Delaware
33 Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as
34 follows:

35
36 **PARTIES:**

37 1. Plaintiff is a California resident with physical disabilities. He is a
38 paraplegic who suffers from Polio. He uses a wheelchair for mobility. He has a

1 specially equipped van with a ramp that deploys out of the passenger side of
2 his van.

3 2. Defendants Towne Center West I, LLC and Towne Center West II, LLC
4 owned the real property located at or about 1850 E. Willow Street, Signal Hill,
5 California, in December 2018.

6 3. Defendants Towne Center West I, LLC and Towne Center West II, LLC
7 own the real property located at or about 1850 E. Willow Street, Signal Hill,
8 California, currently.

9 4. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein,
14 including Does 1 through 10, inclusive, is responsible in some capacity for the
15 events herein alleged, or is a necessary party for obtaining appropriate relief.
16 Plaintiff will seek leave to amend when the true names, capacities,
17 connections, and responsibilities of the Defendants and Does 1 through 10,
18 inclusive, are ascertained.

19

20 **JURISDICTION & VENUE:**

21 5. The Court has subject matter jurisdiction over the action pursuant to 28
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 6. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California's Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.
3

4 **FACTUAL ALLEGATIONS:**

5 8. Plaintiff went to the property in December 2018 to shop at the Sprint
6 Store ("Store") and eat at the Chinese Gourmet restaurant ("Restaurant") with
7 the intention to avail himself of its goods or services, motivated in part to
8 determine if the defendants comply with the disability access laws.

9 9. The Store and Restaurant are facilities open to the public, places of
10 public accommodation, and business establishments.

11 10. Parking spaces are one of the facilities, privileges, and advantages
12 offered by Defendants to patrons of the Store and Restaurant.

13 11. Even though there was a parking space marked and reserved for persons
14 with disabilities directly in front of the Store during Plaintiff's visit, the parking
15 stall and access aisle were not level with each other. The parking stall and
16 access aisle had slopes greater than 2.1%.

17 12. Meanwhile, there was a second parking space in front of the Restaurant
18 and Store but there was no path of travel from the access aisle to the sidewalk
19 that leads to the Store and Restaurant. Instead, the plaintiff would have to
20 travel behind parked cars to find a path of travel to the Store and Restaurant.

21 13. Additionally, even though there were other parking spaces marked and
22 reserved for persons with disabilities who drive vans in the shopping center,
23 there were no accessible routes from those parking spaces to the Store and
24 Restaurant.

25 14. Additionally, if plaintiff wanted to use other parking spaces marked and
26 reserved for persons with disabilities in the shopping center, he would have to
27 travel behind parked cars as well as travel with cars in the vehicular drive paths
28 to make it back to the Store and Restaurant. This is not accessible for plaintiff.

1 15. Currently, the parking stall and access aisle directly in front of the Store
2 are not level with each other.

3 16. Defendants have failed to maintain in operable working condition those
4 features of facilities and equipment that are required to be readily accessible to
5 and usable by persons with disabilities at the Subject Property.

6 17. Plaintiff personally encountered these barriers.

7 18. This inaccessible facility denied the plaintiff full and equal access and
8 caused him difficulty.

9 19. Paths of travel are another one of the facilities, privileges, and
10 advantages offered by Defendants to patrons of the Store and Restaurant.

11 20. Even though the plaintiff did not personally confront the barriers, some
12 of the walkway leading to the Store and Restaurant have cross slopes that are
13 above 2.1%. This is inaccessible to plaintiff.

14 21. Transaction counters are also one of the facilities, privileges, and
15 advantages offered by Defendants to patrons of the Store.

16 22. Unfortunately, the transaction counter at the Store is more than 36
17 inches in height. In fact, the transaction counter is about 45 inches in height.

18 23. There is no lowered, 36 inch portion of the transaction counter at the
19 Store for use by persons in wheelchairs to conduct transactions.

20 24. The defendants have failed to maintain in working and useable
21 conditions those features required to provide ready access to persons with
22 disabilities.

23 25. The barriers identified above are easily removed without much
24 difficulty or expense. They are the types of barriers identified by the
25 Department of Justice as presumably readily achievable to remove and, in fact,
26 these barriers are readily achievable to remove. Moreover, there are numerous
27 alternative accommodations that could be made to provide a greater level of
28 access if complete removal were not achievable.

1 26. A common barrier removal project is modifying transaction counters to
2 make a portion of the counter accessible. This is a simple construction task,
3 well within the capabilities of any general contractor. The task can be
4 completed easily and for a modest price.

5 27. Plaintiff will return to the Store and Restaurant to avail himself of its
6 goods or services and to determine compliance with the disability access laws.
7 He is currently deterred from doing so because of his knowledge of the existing
8 barriers. If the barriers are not removed, the plaintiff will face unlawful and
9 discriminatory barriers again.

10 28. Given the obvious and blatant nature of the barriers and violations
11 alleged herein, the plaintiff alleges, on information and belief, that there are
12 other violations and barriers on the site that relate to his disability. Plaintiff will
13 amend the complaint, to provide proper notice regarding the scope of this
14 lawsuit, once he conducts a site inspection. However, please be on notice that
15 the plaintiff seeks to have all barriers related to his disability remedied. See
16 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
17 encounters one barrier at a site, he can sue to have all barriers that relate to his
18 disability removed regardless of whether he personally encountered them).

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20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
21 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
22 Defendants.) (42 U.S.C. section 12101, et seq.)

23 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 30. Under the ADA, it is an act of discrimination to fail to ensure that the
27 privileges, advantages, accommodations, facilities, goods and services of any
28 place of public accommodation is offered on a full and equal basis by anyone

1 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
2 § 12182(a). Discrimination is defined, inter alia, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,
4 or procedures, when such modifications are necessary to afford
5 goods, services, facilities, privileges, advantages, or
6 accommodations to individuals with disabilities, unless the
7 accommodation would work a fundamental alteration of those
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
11 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
12 Appendix “D.”
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 31. Under the 2010 Standards, access aisles shall be at the same level as the
22 parking spaces they serve. Changes in level are not permitted. 2010 Standards
23 502.4. “Access aisle are required to be nearly level in all directions to provide
24 a surface for wheelchair transfer to and from vehicles.” 2010 Standards §
25 502.4 Advisory. No more than a 1:48 slope is permitted. 2010 Standards §
26 502.4.

27 32. Here, the failure to provide level parking stall is a violation of the law.

28 33. Under the ADA, there must be at least one accessible route connecting

1 every building on the same site. 2010 Standards § 206.2.2. Travel in the
2 vehicular drive path with vehicles is not part of an accessible route.

3 34. According to the California Building Code, it is not permissible to locate
4 handicap-accessible parking stalls in locations where a person with disability
5 is compelled to wheel or walk behind parked cars other than their own. CBC
6 1129B.3.3.

7 35. Here, the failure to provide an accessible route is a violation of the law.

8 36. Nowhere shall the cross slope of an accessible route exceed 2.1%. 2010
9 Standards § 403.3.

10 37. Here, the slopes along the walkways exceeded the levels allowed by law.

11 38. Under the 2010 Standards, where the approach to the sales or service
12 counter is a parallel approach, such as in this case, there must be a portion of
13 the sales counter that is no higher than 36 inches above the floor and 36 inches
14 in width and must extend the same depth as the rest of the sales or service
15 counter top. 2010 Standards § 904.4 & 904.4.1.

16 39. Here, no such accessible counter has been provided in violation of the
17 ADA.

18 40. The Safe Harbor provisions of the 2010 Standards are not applicable
19 here because the conditions challenged in this lawsuit do not comply with the
20 1991 Standards.

21 41. A public accommodation must maintain in operable working condition
22 those features of its facilities and equipment that are required to be readily
23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 42. Here, the failure to ensure that the accessible facilities were available
25 and ready to be used by the plaintiff is a violation of the law.

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1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
2 RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 43. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code §51(b).

11 44. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 45. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21

22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
27 plaintiff is not invoking section 55 of the California Civil Code and is not
28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: January 2, 2019

CENTER FOR DISABILITY ACCESS



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8 By: _____
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10 Chris Carson, Esq.
11 Attorney for plaintiff

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